BEFORE THE FISH AND WILDLIFE COMMISSION OF THE STATE OF MONTANA

n the matter of the adoption of NEW)	NOTICE OF ADOPTION
RULE I regarding state land access)	
ax credit)	

TO: All Concerned Persons

- 1. On November 27, 2013, the Fish and Wildlife Commission (commission) published MAR Notice No.12-402 pertaining to the proposed adoption of the above-stated rule at page 2212 of the 2013 Montana Administrative Register, Issue Number 22.
- 2. The commission has adopted the following rule as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

NEW RULE I (ARM 12.2.601) STATE LAND ACCESS TAX CREDIT

- (1) through (4) remain as proposed.
- (5) The department must consider the following when awarding contracts:
- (a) verification that the state lands are not restricted or closed to general recreational use by Department of Natural Resources and Conservation;
- (b) verification that the state land will be available for a majority of the year to all general recreational use including hunting, fishing, hiking, wildlife watching, and other uses compatible with the use of state lands;
 - (c) access routes restricted to foot travel only:
 - (i) must be capable of accommodating normal ambulatory travel; and
- (ii) must not exceed half a mile one linear mile from the beginning to the end of the access route; and
- (d) access routes available to vehicles must be capable of accommodating typical road use vehicles.
- (6) A landowner may impose reasonable limitations through temporary closure of a public access route to address concerns related to high fire danger, weather-related impact to travel route, safety, or agricultural production activities such as livestock handling or harvest and planting of crops, provided so long as:
- (a) the landowner notifies department regional headquarters at least 24 hours prior to the closure;
 - (b) the landowner posts notice to the public on-site; and
 - (c) the closure is not in effect:
- (i) is in effect for no more than seven days without department review and approval; or and
- (ii) <u>is removed within 24 hours after until</u> the natural environmental conditions no longer exist.
 - (7) and (8) remain as proposed.

AUTH: 87-1-294, MCA

<u>IMP</u>: 15-30-2380, 87-1-294, MCA

3. The commission received a total of 33 comments, 21 supporting adoption of the rule, 6 voicing non-support, 2 posing questions, and 4 offering comments not pertinent to the proposed rule. The commission has thoroughly considered the comments received, and the commission's responses are as follows:

<u>Comment 1</u>: The commission received several comments stating landowners should not be required to allow hunting on the private land that provides access to state land.

<u>Response 1</u>: Landowners will not be required to allow hunting on the private land enrolled in this program.

<u>Comment 2</u>: The commission received one comment suggesting that public access corridors where travel is restricted to foot travel only should be allowed to exceed half a mile if it is direct.

<u>Response 2</u>: The rule language has been adopted allowing for routes restricted to foot travel only to not exceed one linear mile from the beginning to the end of the access route.

<u>Comment 3</u>: The commission received one comment suggesting that temporary closures should not extend past the time the event that triggered the closure is no longer in effect.

Response 3: The rule language has been adopted providing that the closure must be removed within 24 hours after the natural environmental conditions no longer exist.

<u>Comment 4</u>: The commission received four comments suggesting that the state land parcel to which access is being provided should be of a certain size or provide for a certain quality of habitat or certain kind of recreational opportunity.

<u>Response 4</u>: The law creating this new program did not provide authority for imposing those kinds of restrictions through administrative rule.

<u>Comment 5</u>: The commission received two comments asking how the public would be made aware of these project sites.

<u>Response 5</u>: When the department implements the program, this type of information will be made available to the public through the department web site.

<u>Comment 6</u>: The commission received several comments suggesting alternative methods that may be used to gain access to otherwise inaccessible state lands including offering land trades, forcing access on historic travel routes, offering special late season hunts, or pursuing section line access laws.

<u>Response 6</u>: The suggestions offered in these comments were outside the scope of this rulemaking authority.

<u>Comment 7</u>: The commission received several comments concerning potential behavior of public recreationists on private and state land involved with this program.

Response 7: This new program is a voluntary program that offers a tax benefit to a landowner willing to enter into a contract with the department that determines when, where, and how the public may gain access to enrolled private land to reach an adjacent parcel of otherwise inaccessible state land. All applicable laws that apply to private and state lands will be enforced by the appropriate law enforcement agency.

<u>Comment 8</u>: The commission received several comments suggesting mandating motorized game retrieval, denying access by all-terrain vehicle, or requiring walk-in only access.

Response 8: The terms of each contract negotiated between the department and a landowner will be specific to each project site. The landowner may determine when, where, and how the public may gain access to and across the enrolled private land to reach the adjacent state land parcel.

/s/ Dan Vermillion
Dan Vermillion, Chairman
Fish and Wildlife Commission

/s/ Rebecca Jakes Dockter Rebecca Jakes Dockter Rule Reviewer

Certified to the Secretary of State February 18, 2014